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# Memorial Service, Hon. Howard G. Munson

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#108

Memorial Service  
Hon. Howard G. Munson  
United States Courthouse  
Syracuse, New York  
Friday, December 19, 2008

We meet to honor the memory of Howard Munson and to celebrate his life. He was special to each of us in different ways. To me, he was always a figure larger than life. He was Chief Judge of the Northern District when I took my oath as District Judge in 1981. He presided at my Investiture and introduced me to the work of a District Court Judge. Howard was an imposing figure, tall and with that booming voice that commanded immediate attention. I was fresh from the State Supreme Court bench, very familiar with the laws pertaining to automobile accidents, divorce and the inevitable Article 78 proceedings that came to a state judge sitting in Albany. Howard soon impressed upon me the fact that my work would be much different in Federal Court, and he was very patient in answering the myriad of questions that I had about jurisdiction, procedure and the constitutional issues to be faced. He had a prodigious memory and could cite chapter and verse in answering any question I put to him.

I learned from Howard by precept and example. He exemplified the best qualities of a Federal Judge and never more so than in a case that he drew in Albany in September of 1981,

shortly after I was appointed to the Federal Bench. Howard's opinion in that case, reported as Selfridge v. Carey, was all about the staging of a rugby match. The match was scheduled to take place in Albany on September 22 between the South African Springboks Team and a team to be fielded by the Eastern Rugby Union of America. Feelings were running high against the Government of South Africa, which at that time still pursued the policy of racial segregation known as apartheid. Many saw the Springboks Team as an affirmation of that policy. The stadium where the match was to be played was a City facility, and security for the game was to be provided by the City. The Mayor of Albany requested additional security from the Governor, who responded by prohibiting the match altogether, ostensibly due to the excessive cost of the additional security. In the Governor's opinion, based on an intelligence report from the Superintendent of State Police, the game could create "widespread violence" and "imminent danger of riot and breach of the peace."

The Eastern Rugby Union sought a preliminary injunction to ensure that the game would take place as planned. Howard held a hearing on the injunction before a jammed-packed courtroom at our Albany County Federal Courthouse. Protestors on both sides lined the streets. Tensions were high, and the pressure was intense. Howard and his clerks pulled an all-nighter and came up the next

morning after the hearing with an Opinion granting the injunction, with some stirring language about the rights of the citizenry. Howard read the Opinion from the bench to a standing-room only audience. He recognized the Governor's duty to preserve the peace as well as the duty to secure an alternative less restrictive than a complete ban. Emphasizing the State's obligation to protect plaintiffs' fundamental rights, including the right of association, Howard put forth the following words that still ring true:

By enjoining the scheduled sporting event, the Governor of the State of New York seeks to destroy the very constitutional freedoms that have ennobled the more than century long struggle to insure racial equality in this country. The benefits of such a constitutional heritage must not be commanded by executive fiat, and extended or withheld on the basis of changing popular demand.

Complete silence followed Howard's reading of the Opinion, and then there was thunderous applause. Everyone in the room understood that the Constitution had prevailed.

I took away from my observation of that case a deep respect for Howard's wisdom, integrity, courage, independence and good judgment. I learned a great deal from Howard in that case, including the need to look behind the curtain to identify the truth of the Wizard of Oz. In this case, Howard found that the truth was that there was no basis for predicting blood in the streets of Albany. The so-called intelligence report was by and

large a fiction, insufficient to support the Governor's total ban on the game. Howard's Opinion suggests that Federal Courts should not take at face value the representations of the Executive Branch regarding security matters. I will not comment on the application of Howard's brilliant Opinion to present day-concerns.

Howard's contributions to jurisprudence were many, and he wrote a variety of opinions on a variety of subjects. His record on appeal in the Second Circuit was near perfect. Newspapers as diverse geographically as the Long Beach, California Press-Telegram, the South Florida Sun Sentinel and the Express News of San Antonio, Texas, reporting on his death, described the precedent-setting cases over which he presided: the Cornell graduate student who crippled thousands of computers with a virus; the hostile takeover of Carrier Corp.; the Hare Krishna solicitations at airports; the first round prosecution of Hells Angels; and, of course, the unconstitutional situation that led to the construction of a new Onondaga County Jail.

But Howard was much more than the sum of his cases and his precedential jurisprudence. He was very much a part of what Tom Brokaw classified as "The Greatest Generation." In his book of that title, Brokaw paid tribute to the men and women who interrupted their educations, their careers and their lives at

home to fight in World War II and then returned to make this nation a better place. Howard left the University of Pennsylvania's Wharton School to enter the Army after his freshman year. During his extensive combat service, he was wounded in the invasion of Normandy, but rejoined the 79th Division in its march through Europe into Germany. He was awarded four Battle Stars, a Bronze Star and a Purple Heart.

Howard returned to Wharton after the war and received his B.S. in Economics from the University of Pennsylvania in 1948. He obtained his law degree from Syracuse University and began his legal career with the Hiscock Law Firm, where he practiced until his appointment to the Federal Bench by President Ford in 1976. But like all of those who comprised the Greatest Generation, he not only advanced in his own career but gave of his time and treasure to make his community and his nation a better place. He served as President of the Syracuse City School District Board of Education, as Chair of the Ethics Committee of the Onondaga County Legislature, as a member of the Metropolitan Commission on the Aging and as a member of the District Attorneys' Advisory Council.

Howard came to be a good friend as well as a valued colleague. I always looked forward to seeing him when he came to Albany, usually in the company of his long-time companion and

colleague Neal McCurn. We were the three Ms -- the active judges of the Northern District -- Munson, McCurn and Miner. Whenever I saw a car in the parking lot of the Courthouse in Albany bearing the license plate "Penn 48" (sometimes the car was a bit battered), I knew that an interesting day, and probably a long night, was at hand. What great company he was! And what a great storyteller! I would always sit spellbound as he told his stories -- stories about cases he had tried during his practicing days; stories about his war experiences; and stories about people he had met and things he had done along the way. And as he talked, usually glass in hand, the listener would be transported to another time and place. It is no wonder he was such a success as a trial lawyer. The three Ms had a great time together, and when we were joined by Howard's wife Ruth, Neal's wife Nancy, and my wife Jackie at the Circuit Conferences, the good times really rolled.

Howard was on the bench during my Investiture as a Judge of the Court of Appeals. One speaker at the Investiture, extolling my virtues, compared me to John Marshal Harlan, who was an alumnus of my law school and also served on the Second Circuit Court of Appeals. The speaker said: "And you know what happened to him." Howard said, under his breath but loud enough for everyone to hear, "He died." I guess Howard didn't want me to

get too big a head.

But Howard said some very nice things about me too, and, as he spoke, I wondered whether I was doing the right thing. Judge Foley, our Senior Judge, said that I was going from being a Judge to being one-third of a Judge. Beyond that, I knew I would miss the other two Ms of the Northern District. I knew I would miss the good fellowship and collegiality that they provided. Actually, although I much enjoy the work of the Court of Appeals, I never have found there the welcoming warmth that I received in the Northern District. And although we are supposed to be a collegial court, I found more collegiality and comraderie in the Northern District, all thanks to Howard Munson. Even after I took up my duties on the Court of Appeals, he would stop in at my Chambers to chat whenever he was in Albany. He was a man who was easy to love. To know him was to love him. He was one of a kind. He graced the bench and honored the profession of judging for 32 years. Today, we properly honor him. We will always hold his memory close to our hearts.